

**SECTION I: PUBLIC INFORMATION
(QUESTIONS 1 THROUGH 47)**

Personal Information

1. Full Name: Chris William Davis
2. Have you ever used or been known by any other legal name? No. If so, state name and reason for the name change: Not Applicable.
3. Work Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129.
4. How long have you been a continuous resident of Nevada?

I have been a continuous resident of Nevada for seventeen (17) years.
5. Age: fifty-four (54) years old.
(NRS 3.060 states that a district judge must be at least 25 years old.)

Employment History

6. Using the format provided in Attachment "A" please start with your current employment or most recent employment, self-employment, and periods of unemployment for the 20 years immediately preceding the filing of this Application.

See Attachment "A."

Educational Background

7. List names and addresses of high schools, colleges and graduate schools (other than law school) attended; dates of attendance; certificates or degrees awarded; reason for leaving.

Western High School; 4601 W. Bonanza Road, Las Vegas, Nevada 89107; September 1975 - June 1977; High School Diploma; Early Graduation.

Brigham Young University; Provo, Utah 84602; August 1977 - April 1979, October 1981 - April 1984; January 1985 - August 1985; B. A. in Political Science. I initially left in 1979 to serve a two (2) year mission for the Church of Jesus Christ of Latter-day Saints. I left in 1984 for a brief academic suspension which was the result of a broken marriage engagement which interfered with my ability to concentrate on school work. I then left in 1985 to start my own computer consulting business. I ultimately graduated from Brigham Young University in August 1992.

University of Utah; 201 South 1460 East, Salt Lake City, Utah 84112; September 1989 - May 1992; I left to attend Law School.

8. Describe significant high school and college activities including extracurricular activities, positions of leadership, special projects that contributed to the learning experience.

During High School, I was an active participant in Debate and the Varsity Quiz television program. While in Debate, I took Second (2nd) place in the Clark County Debate Championship.

At Brigham Young University, I was one of the founding student organizers of a statewide exit poll for the 1982 election. To conduct the poll, we recruited eleven (11) other colleges and universities from around the state of Utah. I participated in the creation of a training video which was used to provide instruction to the other colleges and universities on proper polling techniques and led training at Utah State University. I also assisted in the creation of proper exit poll questions which were designed to more fully understand the reasons for the election results. I was given the opportunity to interview Senator Orrin Hatch, which interview was broadcast on election day. On election day, I was charged with supervising pollsters to insure that proper polling techniques were used. After the election, I helped analyze the election data obtained so that the results could be published. The poll was the most accurate predictor of election results in the state of Utah that year, and even accurately predicted the election results of a race that was determined by less than 1% of the vote. The poll still continues to provide Utah's most accurate polling data for local, state, and national elections. See <http://exitpoll.byu.edu/>.

At the University of Utah, I was selected to intern for Speaker of the Utah House of Representatives, Robert Bishop. While working for Speaker Bishop, I was tasked with reviewing legislation to provide input as to the legislation's suitability. I also attended committee meetings on behalf of Speaker Bishop to report on the results of those meetings. I also had the opportunity to draft legislation, which was introduced into the House of Representatives.

9. List names and addresses of law schools attended; degree and date awarded; your rank in your graduating class; if more than one law school attended, explain reason for change.

Cleveland State University, Cleveland-Marshall College of Law; 2121 Euclid Avenue, LB 138, Cleveland, Ohio 44115; August 1992 - May 1993. I left Cleveland-Marshall because I was ranked second (2nd) in my class, which allowed me to transfer to the University of Utah College of Law and take advantage of in-state tuition.

University of Utah; 332 South 1400 East, Salt Lake City, Utah 84112; August 1993 - May 1995; J.D., May 1995; I graduated in the top 25% of my class.

10. Indicate whether you were employed during law school, whether the employment was full-time or part-time, the nature of your employment, the name(s) of your employer(s), and dates of employment.

I was employed part-time during law school at the firm of McMurray, McMurray, Dale and Parkinson, in Salt Lake City, Utah, as a law clerk, from December 1992 to May 1995. After graduation, I was employed by the firm as an attorney.

11. Describe significant law school activities including offices held, other leadership positions, clinics participated in, extracurricular activities.

While at the University of Utah College of Law, I externed for a clinic at the Utah Legal Aid Society and helped litigate family law matters. I was also twice named as a William H. Leary Scholar, an award given to students in the top 10% of their class for a semester.

Law Practice

12. State the year you were admitted to the Nevada Bar.

I was admitted to the State Bar of Nevada in October 1998.

13. Name states (other than Nevada) where you are or were admitted to practice law and your year of admission.

I was admitted to the Utah State Bar in October 1995.

14. Have you ever been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state? If so, describe the circumstance, dates, and locations.

No, I have never been suspended, disbarred, or voluntarily resigned from the practice of law in Nevada or any other state.

15. Estimate what percentage of your work over the last five years has involved litigation matters, distinguishing between trial and appellate courts. For judges, answer questions 16-20 for the five years directly preceding your appointment or election to the bench.

Over the past five years approximately 80% of my time has been involved in litigation matters. Of that time, approximately 75% is before trial courts and 25% is before appellate courts.

16. Estimate percentage of time spent on (1) domestic/family and juvenile law matters, (2) civil litigation, (3) criminal matters, and (4) administrative litigation.

My percentage of time spent on domestic/family and juvenile law matters is approximately 1%. Approximately 80% of my time is spent on civil litigation, 4% on criminal matters, and 15% on litigating administrative matters.

17. In the past five years, what percentage of your litigation matters involved cases set for jury trials vs. non-jury trials?

Approximately 30% of my litigation matters involved cases set for jury trials, while 70% of my litigation matters involved cases set for non-jury trials.

18. Give the approximate number of jury cases tried to a conclusion during the past five years with you as lead counsel. Give the approximate number of non-jury cases tried to a decision in the same period.

I have not tried any jury cases to a conclusion during the past five years. I have only tried one case to a conclusion in a court of record: *Rojas-Lopez v. Thomason*, Case No. A-09-589685-C, before the Nevada District Court for the Eighth Judicial District. I was sole counsel for the City of North Las Vegas at the bench trial.

In my career, I have been very fortunate to secure judgment on behalf of my clients through motions to dismiss or motions for summary judgment in many of the cases I have litigated. While I have prepared for trial on numerous occasions, the remainder of the court cases were resolved either through mandatory mediation required by Eighth Judicial District Court Rules for cases under \$50,000.00, or through settlement on terms favorable to my client.

19. List courts and counties in any state where you have practiced in the past five years.

Nevada Eighth Judicial District Court, Clark County, Nevada.

Nevada Supreme Court, Clark County, Nevada.

United States District Court for the District of Nevada, Clark County, Nevada.

United States Bankruptcy Court for the District of Nevada, Clark County, Nevada.

United States Court of Appeals for the Ninth Circuit, San Francisco, California.

North Las Vegas Justice Court, Clark County, Nevada.

Las Vegas Justice Court, Clark County, Nevada.

20. List by case name and date the five cases of most significance to you (not including cases pending in which you have been involved), and list or describe:

- a. case name and date,
- b. court and presiding judge and all counsel
- c. the importance of each case to you and the impact of each case on you,
- d. your role in the case.

1. I successfully defended the City of North Las Vegas (the "City") against claims of disability discrimination in *Curley v. City of North Las Vegas*, Case No. 2:09-cv-01071-KJD-VCF, filed in 2009. The case was filed in United States District Court for the District of Nevada, before the Honorable Kent J. Dawson, with Jeffrey F. Barr, Esq. also representing the City and Michael P. Balaban, Esq., representing Michael P. Curley. The case is notable because it is one of the first cases to address the expanded definition of disability under the 2008 amendment to the ADA ("ADAAA"). I served as lead counsel for the City and drafted the motion for summary judgment which successfully argued, among other issues, that Plaintiff was not disabled even under the expanded definition of a disability. Due to the novelty of the issue, I had the opportunity to hone my skills in statutory construction which will serve me well as a District Court Judge.

2. I successfully defended the City against tort claims in *Rojas-Lopez v. City of North Las Vegas*, Case No. A-09-589685-C, filed in 2009. The case was filed in Nevada Eighth Judicial District Court, before Honorable Mark R. Denton and then transferred to the Honorable Nancy L. Allf, with Jeffrey F. Barr, Esq. also representing the City, and Michael H. Hamilton, Esq. representing Plaintiffs. I served as sole counsel at the bench trial of this case and drafted the appellate brief before the Nevada Supreme Court in *City of North Las Vegas v. Rojas-Lopez*, Case No. 5993. This case was important because it is one of the few cases I could not resolve by either motion or settlement. It is also notable because the appellate brief was the first time I argued before the Nevada Supreme Court that the Notice of Claim Statute found in NRS 268.020 did not violate the equal protection clause as held in *Turner v Staggs*, 89 Nev. 230, 235-36, 510 P.2d 879,882-83 (1973). My argument was based on *Agost v. Idaho*, 423 U.S. 993 (1975), which dismissed an appeal of an Idaho Supreme Court decision upholding an almost identical notice of claim statute against an equal protection challenge. I argued that the dismissal in *Agost* was binding precedent under *Hicks v. Miranda*, 422 U.S. 332, 343-44 (1975). In formulating this strategy, I had to rely on my ability to find creative solutions which should serve me well as a District Court Judge.

3. I successfully defended the City against claims of civil rights violations in *Rice v. City of North Las Vegas*, 2:07-cv-01192-RCJ-GWF, filed in 2007. The case was filed in United States District Court for the District of Nevada, before the Honorable Robert C. Jones, with Carrie Torrence, Esq. also representing the City, and Peter Goldstein, Esq. representing Plaintiffs. The case is notable because it involved complex Fourth Amendment issues. The case involved allegations that police officers lacked probable cause and used unreasonable force to detain Plaintiffs. While these issues were raised in a civil case, the same issues are present in criminal cases. Such civil cases are almost never decided on summary judgment due to factual disputes inherent in such cases. Drafting the successful motion for summary judgment required making fine distinctions as to what constitutes probable cause and unreasonable force. I served as lead counsel for the City and drafted the motion for summary judgment.

4. I defended the City against claims of unfair labor practices in *City of North Las Vegas v. Spannbauer*, Nevada Supreme Court Case Number 54849, the appeal of which was filed in 2009. This appeal was filed with the Nevada Supreme Court, and was heard En Banc, with Chief Justice Parraguirre presiding. Also representing the City were Carrie Torrence, Esq., L. Steven Demeree, Esq., Nicholas Vaskov, Esq., and Jeffrey Barr, Esq. Counsel for Appellee Eric Spannbauer was Daniel Marks, Esq. and Adam Levine, Esq. Counsel for the Nevada Board State of Nevada, Local Government Employee-Management Relations Board was Scott R. Davis, Esq. The case was significant because I was asked to take the lead in this appeal after the opening brief was filed because the lead attorney retired from the City. Because I was assigned to take the lead in the case in mid-briefing, my skills were tested in becoming quickly familiar with a case so that I could draft the reply brief. These are the same quick study skills that would be required of a District Court Judge. I also was required to find innovative methods to tailor new arguments so that they would not be challenged as being raised for the first time in the reply brief. This case was my first opportunity to present oral arguments before an En Banc panel of the Nevada Supreme Court, which provided valuable insights on how each current justice handles an appeal. Because the appeal was unsuccessful, I faced the uphill challenge of drafting a Petition for Rehearing. While such petitions are summarily

dismissed, the Supreme Court found that further briefing was necessary to explore issues not fully addressed in the Court's opinion.

5. I helped reach a settlement favorable for my client in *Nevada Power Company v. Morgan Stanley Capital Group*, Case No. CV-S-03-00338-RCJ(RJJ), filed in 2003. The case was filed in United States District Court for the District of Nevada, before the Honorable Robert C. Jones. Along with myself, Amanda Cowley, Esq. and Steve Morris, Esq., who was the lead attorney, represented Nevada Power Company. Morgan Stanley was represented by Mark H. Churchill, Esq., Paul R. Hejmanowski, Esq., Jeannie N. Hua, Esq. and Eric S. Johnson, Esq. In this case, I drafted a motion for summary judgment which resulted in a settlement where Nevada Power paid over a million dollars less to Morgan Stanley than Nevada Power had initially offered prior to litigation, thus providing significant savings to Nevada citizens. The case litigated whether Nevada Power breached its power requirement contract with Morgan Stanley by not providing adequate assurance of future payment. My motion for summary judgment used the novel argument that Morgan Stanley had anticipatorily breached the contract by demanding unreasonable assurances. While Judge Jones did not grant the motion for summary judgment, he indicated that the argument would have a very good chance of success at trial. Shortly, thereafter, Morgan Stanley agreed to settle the case on terms favorable to Nevada Power Company. This case taught me that a judge, even though he is a neutral magistrate, can do much to help settlement when appropriate.
21. Do you now serve or have you previously served as a mediator, an arbitrator, a part-time or full-time judicial officer, or a quasi-judicial officer? To the extent possible, explain each experience.

I have had significant experience as a quasi-judicial officer. I served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. While with Judge George, one of my primary responsibilities was to review all of the bankruptcy appeals. I reviewed the entire record before the bankruptcy court and the parties' appellate briefs. Under Judge George's experienced direction, I then drafted proposed opinions deciding the bankruptcy appeals. I also had the opportunity to review numerous motions to dismiss and for summary judgment on a broad range of issues which included contracts, employment discrimination, civil rights, takings, intellectual property, personal injury, governmental immunities, and unfair trade practices. After my review, I would draft proposed orders deciding those motions. I also drafted numerous proposed orders resolving evidentiary issues in both criminal and civil cases. Under Judge George's direction, I also reviewed and finalized proposed jury instructions in both civil and criminal cases. Additionally, I reviewed sentencing reports from pretrial services and opined on whether the proposed sentences complied with federal sentencing guidelines.

Upon completion of my clerkship with Judge George, Judge Rawlinson, offered me a two-year clerkship. She was seeking an experienced law clerk, as she was a newly appointed judge. I therefore became intimately acquainted with the challenges faced by a newly appointed judge. Under Judge Rawlinson's direction, I continued my duties that I performed under Judge George. Judge Rawlinson, however, tasked me with reviewing her most difficult cases.

When Judge Rawlinson was appointed to the Ninth Circuit, she asked that I continue as her law clerk for the next two years. During my clerkship on the Ninth Circuit, I was assigned the

most difficult cases by Judge Rawlinson. For example, I was responsible for reviewing all death penalty cases and all cases heard en banc. As Judge Rawlinson's confidence in my abilities grew, I was permitted to have greater input into the ultimate opinion drafted and which opinions would be published. I was one of the few Ninth Circuit law clerks permitted to attend panel deliberations after the appeal was heard. I also had the opportunity to serve as a mentor to Judge Rawlinson's other law clerks. I was charged with assigning the upcoming cases to the other law clerks. In many instances, Judge Rawlinson requested that I review proposed opinions drafted by other law clerks before she would provide the final review. While I have not actually performed the duties of a District Court Judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of a District Court Judge. Accordingly, my five years of experience with the federal courts have provided me with broad insights to most, if not all, of the civil and criminal issues that will face a District Court Judge.

I also have quasi-judicial experience as a member of the Nevada State Bar, Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

22. Describe any pro bono or public interest work as an attorney.

Currently, I am assisting a family from Alabama, pro bono, to obtain guardianship of their adult son who has been admitted to University Medical Center and is unable to respond.

My service on the Functional Equivalency Committee for the past eight years, referenced in question 21, is also part of my pro bono or public interest service.

23. List all bar associations and professional societies of which you are or have been a member. Give titles and dates of offices held. List chairs or committees in such groups you believe to be of significance. Exclude information regarding your political affiliation.

I have been a member of the Functional Equivalency Committee for the past eight years. The Functional Equivalency Committee holds hearings to determine whether applicants for the Nevada State Bar, who have not graduated from an ABA accredited law school, have the functional equivalent education provided by an ABA accredited law school through their education as subsequently augmented by their experience. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court.

In the past, I have been a member of the American Bar Association and the Clark County Bar Association. I also have been a member of the Public Lawyers Section of the Nevada State Bar.

24. List all courses, seminars, or institutes you have attended relating to continuing legal education during the past five years. Are you in compliance with the continuing legal education requirements applicable to you as a lawyer or judge?

Yes, I am in compliance with my continuing legal education requirement. *See Attachment "C."*

25. Do you have Professional Liability Insurance or do you work for a governmental agency?

I currently do not have Professional Liability Insurance as I am transitioning my practice from litigation to mediating and arbitrating cases. At all times when I have represented clients, I have been covered by Professional Liability Insurance. Currently, I am representing one pro bono client and obtained coverage through Nevada Legal Services.

Business and Occupational Experience

26. Have you ever been engaged in any occupation, business, or profession other than a judicial officer or the practice of law? If yes, please list, including the dates of your involvement with the occupation, business, or profession.

Yes, I owned and operated my own computer consulting business from 1985 to 1989.

27. Do you currently serve or have you in the past served as a manager, officer, or director of any business enterprise, including a law practice? If so, please provide details as to:
- a. the nature of the business,
 - b. the nature of your duties,
 - c. the extent of your involvement in the administration or management of the business,
 - d. the terms of your service,
 - e. the percentage of your ownership.

From July 2013 to the present, I have been engaged in the practice of law as solo practitioner, for which I am 100 percent responsible. A large percentage of my practice involved contract work for other firms. Currently, I am transitioning my practice from litigation to mediation and arbitration.

From 1985 to 1989, I owned and operated my own computer consulting business. My duties primarily involved maintaining DOS based computers for small businesses. The business was a sole proprietorship, where I was sole owner.

28. List experience as an executor, trustee, or in any other fiduciary capacity. Give name, address, position title, nature of your duties, terms of service and, if any, the percentage of your ownership.

I have no experience as an executor or trustee. My practice as an attorney is my only experience in a fiduciary capacity which is fully set forth in my work history.

Civic, Professional and Community Involvement

29. Have you ever held an elective or appointive public office in this or any other state? Have you been a candidate for such an office? If so, give details, including the offices involved, whether initially appointed or elected, and the length of service. Exclude political affiliation.

I have not had the honor of holding elective or appointive public office in the State of Nevada or any other state. I have, however, been a candidate for judge in two (2) elections.

In 2008, I ran for Nevada District Court Judge for Department 14 against Judge Donald Mosley. Despite the uphill battle of running against an entrenched incumbent, I ran against Judge Mosley in an effort to restore integrity to the Nevada District Court. Judge Mosley had been sanctioned for seven (7) separate ethical violations by the Nevada Supreme Court. I survived the primary election, but narrowly lost to Judge Mosley in the general election.

In 2011, I ran for Las Vegas Municipal Court Judge against Judge George Assad. Judge Assad had also been sanctioned by the Nevada Supreme Court. He ordered a woman to be put in jail without cause until her boyfriend appeared in court on an outstanding warrant. In addition to the uphill battle of again facing an incumbent, I was not able to expend any funds on my campaign because I had depleted my savings in my previous campaign. Despite the lack of funding, I came in third of six candidates in the primary. After the primary, I vigorously supported Judge Assad's remaining challenger. The challenger credited my efforts in eventually unseating Judge Assad in the general election.

30. State significant activities in which you have taken part, giving dates and offices or leadership positions.

My significant activities are fully stated in answer to question 32.

31. Describe any courses taught at law schools or continuing education programs. Describe any lectures delivered at bar association conferences.

I have not taught any law schools or continuing education programs.

32. List educational, military service, service to your country, charitable, fraternal and church activities you deem significant. Indicate leadership positions.

I am a member of the Church of Jesus Christ of Latter-day Saints. Between September 1979 and October 1981, I served a two-year mission for the Church of Jesus Christ of Latter-day Saints, in the Chile - Viña del Mar Mission. Serving the people of Chile began my lifelong commitment to public service. From January 2012 to the present, I have served as a Gospel Doctrine Instructor. Between 2006 and 2011, I served as an Elders Quorum Instructor. Between 2008 and 2010, I served as Executive Secretary to the Durango Ward Bishop. Between 2004 and 2006, I served as First Counselor in the Durango Ward Elders Quorum Presidency. Between 2002 and 2004, I served as a Durango Ward Missionary.

I am also a member of the Boy Scouts of America and have achieved the rank of Eagle Scout. From 2012 to the present, I have served on the Boy Scout Committee for Troop 462 of the Las Vegas Area Council, which committee I currently chair. Between 2010 and 2011, I served as a leader of Cub Scout Pack 462 of the Las Vegas Area Council. Between 2001 and 2002, I served

as an Assistant Scout Master for Troop 462. During the times when I have not served in a specific position, I continue to be actively involved in scouting by serving as a merit badge counselor and generally assisting Boy Scouts to achieve the rank of Eagle.

33. List honors, prizes, awards, or other forms of recognition.

In law school, I was twice named as a William H. Leary Scholar, which is given to students who are in the top 10% of their class for a semester.

While only 14 years of age, I earned the rank of Eagle Scout in the Boy Scouts of America and throughout my life I have been actively involved in scouting.

34. Have you at anytime in the last 12 months belonged to or do you currently belong to any club or organization that in practice or policy restricts (or restricted during the time of your membership) its membership on the basis of race, religion, creed, national origin or sex? If so, detail the name and nature of the club(s) or organization(s), relevant policies and practices, and whether you intend to continue as a member if you are selected for this vacancy.

No.

35. List books, articles, speeches and public statements published, or examples of opinions rendered, with citations and dates.

Between August 1997 and September 2002, I assisted Judge Lloyd D. George and Judge Johnnie B. Rawlinson with the preparation of numerous judicial opinions, none of which I am permitted to divulge.

36. During the past ten years, have you been registered to vote? Have you voted in the general elections held in those years?

I have been registered to vote in the last ten years and I have voted in the general elections in those years.

37. List avocational interests and hobbies.

My main interest is my family. My wife, son and I enjoy spending time together exploring the diverse beauties of the desert southwest and the State of Nevada. My wife and I (and sometimes our 13 year old son) enjoy the theatre, whether at the Smith Center, Spring Mountain Ranch State Park, Las Vegas Academy for the Arts, or at the Utah Shakespearean Festival. I also enjoy going on Boy Scout camp outs and playing basketball with my son.

I am currently in the process of renovating a cabin in Old Town at Mount Charleston, Nevada, which we bought as a family getaway. Renovating the cabin allows me to use skill I developed as a boy when our family built our own home. I completely gutted the kitchen and bathroom back to the bare studs and even removed the floor joists. I replaced all of the plumbing and most of the electrical. I replaced sheet rock with wood siding. I built new kitchen cabinets and installed granite counter tops. I also installed new tile and wood floors. The cabin remains a work in progress and provides an opportunity for our family to both work and play together.

Conduct

38. Have you ever been convicted of or formally found to be in violation of federal, state or local law, ordinance or regulation? Provide details of circumstances, charges and dispositions.

Other than the occasional traffic ticket, I have not been found in violation of any law, ordinance or regulation. The only traffic ticket currently on record with the Nevada Department of Motor Vehicles is a citation for speeding on October 29, 2012, in Salt Lake City, Utah, to which I pled guilty and paid a fine.

39. Have you ever been sanctioned, disciplined, reprimanded, found to have breached an ethics rule or to have acted unprofessionally by any court, judicial or bar association discipline commission, other professional organization or administrative body or military tribunal? If yes, explain. If the disciplinary action is confidential, please respond to question 71.

No.

40. Have you ever been dropped, suspended, disqualified, expelled, dismissed from, or placed on probation at any college, university, professional school or law school for any reason including scholastic, criminal, or moral? If yes, explain.

In 1984, while attending Brigham Young University, I was placed on academic suspension which was the result of a broken marriage engagement that interfered with my ability to concentrate on school work. I was ultimately readmitted and graduated from Brigham Young University in August 1992.

41. Have you ever been refused admission to or been released from any of the armed services for reasons other than honorable discharge? If yes, explain.

No.

42. Has a lien ever been asserted against you or any property of yours that was not discharged within 30 days? If yes, explain.

No.

43. Has any Bankruptcy Court in a case where you are or were the debtor, entered an order providing a creditor automatic relief from the bankruptcy stay (providing in rem relief) in any present or future bankruptcy case, related to property in which you have an interest?

No.

Other

44. If you have previously submitted a questionnaire or Application to this or any other judicial nominating commission, please provide the name of the commission, the approximate date(s) of submission, and the result.

On May 1, 2012, I submitted an application for a position as a United States Magistrate Judge with the United States District Court for the District of Nevada. Another applicant was chosen for the position.

On November 12, 2014, I submitted an application for a position as a Nevada Appellate Court Judge for the State of Nevada. Another applicant was chosen for the position.

On December 15, 2014, I submitted an application for the position of Justice of the Peace for the Las Vegas Justice Court. Another applicant was chosen for the position.

45. In no more than three pages (double spaced) attached to this Application, provide a statement describing what you believe sets you apart from your peers, and explains what particular education, experience, personality or character traits you possess or have acquired that you feel qualify you as a good district court judge. In so doing, address both the civil (including family law matters) and criminal processes (including criminal sentencing.)

See Attachment "D."

46. Detail any further information relative to your judicial candidacy that you desire to call to the attention of the members of the Commission on Judicial Selection.

I would like to thank the members of the Commission on Judicial Selection for volunteering their time to review my application for Nevada District Court Judge. It would be a great honor to be deemed worthy to be a District Court Judge for the great State of Nevada. As a sixth generation Nevadan, I deeply care about this State. My hope is that as a District Court Judge, I will improve the quality and timeliness of judicial decisions, which will insure access to justice for all Nevadans. If selected as a District Court Judge, I pledge to maintain the highest ethical standards, to be courteous to all that appear before me, and to expend the time necessary to be fully prepared to address the issues faced by the court. I commit to use my unique experience, talents, and abilities to accomplish these goals while I serve the citizens of Nevada.

47. Attach a sample of no more than ten pages of your original writing in the form of a decision, "points and authorities," or appellate brief generated within the past five years, which demonstrates your ability to write in a logical, cohesive, concise, organized, and persuasive fashion.

See Attachment "E."

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Attachment "A"

Employment History

Attachment "A"

Attachment A Employment History

Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Current or Last Employer: Solo practitioner as Chris Davis, Esq.

Phone Number: (702) 860-7521

Address: 3933 Lost Miner Court, Las Vegas, Nevada 89129

From: July 2012, **To:** Present

Supervisor's Name: None, self-employed

Supervisor's Job Title: None, self-employed

Your Title: Attorney

Specific Duties: Civil Litigation and Appellate practice before Nevada and United States Courts. Duties include client counseling, analyzing trial pleadings, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments. I am currently transitioning my practice to a mediation and arbitration practice.

Reason for Leaving: Not applicable, current employment.

Previous Employer: City of North Las Vegas

Phone Number: (702) 633-1050

Address: 2250 Las Vegas Boulevard North, North Las Vegas, Nevada 89030

From: March 2006, **To:** July 2012

Supervisor's Name: Steve Demaree (702) 431-1941

Supervisor's Job Title: Assistant City Attorney

Your Title: Deputy City Attorney

Specific Duties: Senior litigator in the civil division for the North Las Vegas City Attorney, focusing on Civil Rights, Employment, and Personal Injury actions. Served as a mentor for other attorneys in the civil division. Routinely practiced before the Ninth Circuit Court of Appeals, Nevada Supreme Court, United States District Court, Nevada District Court and the Local Government Employee-Management Relations Board.

Reason for Leaving: I resigned over disputes with the newly appointed City Attorney.

Attachment A Employment History Continued
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Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Previous Employer: Morris Pickering

Phone Number: (702) 474-9400

Address: 300 South 4th Street, Suite 900, Las Vegas, Nevada 89101

From: September 2002, **To:** March 2006

Supervisor's Name: Steve Morris

Supervisor's Job Title: Managing Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on complex commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to return to public service at the City of North Las Vegas.

Previous Employer: United States Ninth Circuit Court of Appeals

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 2000, **To:** September 2002

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States Appellate Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed circuit court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before Ninth Circuit Court of Appeals including all death penalty cases and cases heard en banc. Reviewed and analyzed court record and appellate briefs. Drafted proposed opinions for review by Judge Rawlinson. Supervised and mentored other attorney law clerks.

Reason for Leaving: Clerkship ended.

Attachment A Employment History Continued
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Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5670

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: September 1998, **To:** September 2000

Supervisor's Name: Honorable Johnnie B. Rawlinson

Supervisor's Job Title: United States District Court Judge

Your Title: Senior Attorney Law Clerk

Specific Duties: Assisted newly appointed district court judge with creating and implementing chamber policies and procedures. Worked on a broad range of civil and criminal issues brought before the federal district court including all bankruptcy appeals. Reviewed and analyzed court record and briefs. Reviewed and analyzed criminal sentencing recommendations. Drafted proposed orders for review by Judge Rawlinson.

Reason for Leaving: Clerkship ended.

Previous Employer: United States District Court for the District of Nevada

Phone Number: (702) 464-5500

Address: 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101

From: August 1997, **To:** September 1998

Supervisor's Name: Honorable Lloyd D. George

Supervisor's Job Title: United States District Court Judge

Your Title: Attorney Law Clerk

Specific Duties: Assisted judge with all phases of civil and criminal litigation for the Court, including bankruptcy appeals. Responsibilities included evaluating case files, researching applicable law, writing memoranda, making recommendations, and preparing court orders.

Reason for Leaving: Clerkship ended.

Attachment A Employment History Continued
--

Please start with your current employment or most recent employment, self employment, and Periods of unemployment for the last 20 years preceding the filing of this Application.

Previous Employer: McMurray, McMurray, Dale & Parkinson (firm has ceased operations)

Phone Number: (801) 444-4300 (phone number of Judge Robert J. Dale, former supervisor)

Address: Honorable Robert Dale, Second District Court, 425 Wasatch Drive, Layton, UT 84041

From: December 1993, **To:** August 1997

Supervisor's Name: Robert J. Dale

Supervisor's Job Title: Partner

Your Title: Attorney

Specific Duties: Appellate and civil litigation practice focusing on commercial litigation involving Contracts, Corporations, Administrative, Real Property, Tort, and Employment Law.

Reason for Leaving: I left to take employment as a federal law clerk.

Attachment "B"

References

Attachment "B"

Attachment "C"

CLE

Attachment "C"

Nevada Board of Continuing Legal Education
Unaudited CLE Transcript

Tuesday, January 27, 2015
 Chris W. Davis
 Compliance Group 1
 2015 Compliance Period Ending :
 Thursday, December 31, 2015

Needed for Compliance:**Credits: General: 10 Ethics: 2 Substance Abuse: 0****Fees:** 2015 Annual Fee \$40.00

This course transcript indicates the courses and distribution of CLE credits for the compliance periods displayed as well as carry over to the next year. The Excess Credits column includes credits exceeding the carry over limit.

Course Date	Course Name	Total Credits	Credits Applied by Year		Carry Forward	Excess Credits
			2014	2015		
12/31/2013	2013 SUBSTANCE ABUSE	1.00S				
12/31/2013	2013 CARRY HOURS	2.50E		2.00E 0.50E		
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00ED		1.00ED		
12/31/2014	Limited Scope Representation 2014: Ethical & Practical Challenges	1.00GD		1.00GD		
12/31/2014	Schutte v. Coalition to Defend Affirmative Action & the Roberts Court's Vision of a Post-Raci	1.00GD		1.00GD		
12/31/2014	Representing the Pro Bono Client: Consumer Law Basics 2014	5.00GD		5.00GD		
12/31/2014	Critical Start-Up Business & Legal Issues 2014	1.50GD		1.50GD		

If you do not see a course posted to your record, please be advised credits are entered in the order they are received.
 REMINDER: Excess ethics can be used towards any general credit deficiency.

Requirements Met or Waived:

N N

Total Hours Required:

0 0 12

Hours Required By:

12/31/2014 12/31/2015

Posting Codes

E = Ethics
 G = General
 S = Substance Abuse
 A = Authorship
 B = Bridge the Gap
 D = Alternate Format
 H = In-Home Study
 F = Faxed
 T = Teaching

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11/10/14

TO: Chris W. Davis [6616]
 3933 Lost Miner Court
 Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
 Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2013 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
AccessMcle	#450S/A:Att&Alchoh	01/01/13	SA: AltFormat,	1.	1.
NACLE	AvoidMalpracRetire	01/01/13	alt format,	0.	1.
MCLEZ	ClearContractDraft	01/01/13	alt format,	0.	1.
PLI	BankrCan&CantDoBor	01/01/13	alt format,	0.	3.

ETHICS - 2 Required

Credits carried forward:		4.0
Earned: Live	0.0	Alternate 1.0
Total		1.0
Excess ethics to carry forward, or deficiency		2.5

GENERAL CREDITS - 10 Required

Credits carried forward		4.5
Earned: Live	0.0	Alternate 5.0
Total		5.0
Authorship (see attached sheet)		
Total general credits:		10.0
may include excess ethics not used above		
Excess general credits to carry forward or deficiency		0.0

REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/10/14

TO: Chris W. Davis [6616]
 3933 Lost Miner Court
 Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
 Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2012 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NoLVPoliceDep	LegalUpdate	04/17/12	North Las Vegas, N	0.	8.
AccessMcle	netwrkProf&Ethical	01/01/12	alt format,	1.	1.
AccessMcle	#420EthicsProspect	01/01/12	AltFormat,	1.	1.
AccessMcle	LegalMalpracExpert	01/01/14	alt format,	1.	1.
AccessMcle	#428LegalMalpLawsu	01/01/12	alt format,	1.	1.
AccessMcle	BiasBusnCaseDivers	01/01/12	alt format,	1.	1.
AccessMcle	MirandaWarning	01/01/12	alt format,	0.	1.
AccessMcle	BestBusnEntity	01/01/12	alt format,	0.	1.
AccessMcle	AssetProtectNutsBo	01/01/12	alt format,	0.	1.
AccessMcle	EconomicDamage	01/01/12	alt format,	0.	1.
AccessMcle	SalesTiptTechCorpL	01/01/12	alt format,	0.	1.
AccessMcle	ProbateEstateTrust	01/01/12	alt format,	0.	1.

ETHICS - 2 Required

Credits carried forward:	1.5
Earned: Live 0.0 Alternate 5.0 Total	5.0
Excess ethics to carry forward, or deficiency	4.0

GENERAL CREDITS - 10 Required

Credits carried forward	0.0
Earned: Live 8.0 Alternate 6.0 Total	14.0
Authorship (see attached sheet)	
Total general credits:	14.5
may include excess ethics not used above	
Excess general credits to carry forward or deficiency	4.5

REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/10/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2011 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NAG	EthicsPublicAttys	12/15/11	Las Vegas, NV	2.	2.
<hr/>					
ETHICS - 2 Required					
Credits carried forward:				4.0	
Earned: Live 2.0 Alternate 0.0 Total				2.0	
Excess ethics to carry forward, or deficiency				1.5	
<hr/>					
GENERAL CREDITS - 10 Required					
Credits carried forward				7.5	
Earned: Live 0.0 Alternate 0.0 Total				0.0	
Authorship (see attached sheet)					
Total general credits:				10.0	
may include excess ethics not used above					
Excess general credits to carry forward or deficiency				0.0	

REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/10/14

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 3933 Lost Miner Court
 Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
 Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2010 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NVStateCommis	EthicsInNVGovt	01/01/10	VariousLocations,	2.	2.
NAG	DepoPractice	10/26/10	alt format(LV),	0.	1.5
NAG	ImmunityDefenses	10/26/10	alt format(Lv),	0.	1.5
NAG	EthicsPublicAttys	12/18/10	Las Vegas, NV	2.	2.

ETHICS - 2 Required

Credits carried forward:		3.5
Earned: Live 4.0	Alternate 0.0	Total 4.0
Excess ethics to carry forward, or deficiency		4.0

GENERAL CREDITS - 10 Required

Credits carried forward		13.0
Earned: Live 0.0	Alternate 3.0	Total 3.0
Authorship (see attached sheet)		
Total general credits:		17.5
may include excess ethics not used above		
Excess general credits to carry forward or deficiency		7.5

REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/12/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2009 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NACPA	GovtCivilAttysConf	05/13/09	Lake Tahoe, NV	2.	10.
<hr/>					
ETHICS - 2 Required					
Credits carried forward:				3.5	
Earned: Live 2.0 Alternate 0.0				Total 2.0	
Excess ethics to carry forward, or deficiency				3.5	
<hr/>					
GENERAL CREDITS - 10 Required					
Credits carried forward				15.0	
Earned: Live 8.0 Alternate 0.0				Total 8.0	
Authorship (see attached sheet)					
Total general credits:				23.0	
may include excess ethics not used above					
Excess general credits to carry forward or deficiency				13.0	

REMINDER
Excess ethics can be used towards any general credit deficiency.

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11/12/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2008 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NACPA	GovtCivilAttyConf	05/07/08	So. Lake Tahoe, NV	2.	10.
IMLA	AnnualConf	09/14/08	Las Vegas, NV	1.5	15.

ETHICS - 2 Required

Credits carried forward:

Earned: Live	3.5	Alternate	0.0	Total	2.0
					3.5
Excess ethics to carry forward, or deficiency					3.5

GENERAL CREDITS - 10 Required

Credits carried forward

Earned: Live	21.5	Alternate	0.0	Total	6.0
					21.5

Authorship (see attached sheet)

Total general credits:	27.5
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may include excess ethics not used above

Excess general credits to carry forward or deficiency	15.0
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REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/12/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2007 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
NACPA	CivilGovtAttyConf	05/09/07	Lake Tahoe, NV	1.	11.

ETHICS - 2 Required			
Credits carried forward:			
Earned: Live	1.0	Alternate	0.0
Total			3.0
Excess ethics to carry forward, or deficiency			2.0

GENERAL CREDITS - 10 Required			
Credits carried forward			
Earned: Live	10.0	Alternate	0.0
Total			6.0
Authorship (see attached sheet)			
Total general credits:			16.0
may include excess ethics not used above			
Excess general credits to carry forward or deficiency			6.0

REMINDER

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11/12/14

TO: Chris W. Davis [6616]
 3933 Lost Miner Court
 Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
 Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2006 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
Lexis-Nexis	Lexis I	01/01/06	several locations,	0.	1.
NAG	FederalTrialPrep	10/19/06	Las Vegas, NV	0.	3.
NAG	EthicsforPublicAtt	12/07/06	Las Vegas, NV	2.	2.
CLE Intl.	EminentDomain	05/11/06	Las Vegas, NV	1.	13.

ETHICS - 2 Required

Credits carried forward:		2.0
Earned: Live 3.0 Alternate 0.0	Total	3.0
Excess ethics to carry forward, or deficiency		3.0

GENERAL CREDITS - 10 Required

Credits carried forward		0.0
Earned: Live 16.0 Alternate 0.0	Total	16.0
Authorship (see attached sheet)		
Total general credits:		16.0
may include excess ethics not used above		
Excess general credits to carry forward or deficiency		6.0

REMINDER

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11/12/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2005 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
SBN	CivilRulesProcedur	01/28/05	las Vegas, NV	1.	6.
SBN	Revisit10Commandme	12/02/05	Las Vegas, NV	1.	6.

ETHICS - 2 Required

Credits carried forward:

Earned: Live	2.0	Alternate	0.0	Total	2.0
Excess ethics to carry forward, or deficiency					2.0

GENERAL CREDITS - 10 Required

Credits carried forward

Earned: Live	10.0	Alternate	0.0	Total	10.0
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Authorship (see attached sheet)

Total general credits:	10.0
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may include excess ethics not used above

Excess general credits to carry forward or deficiency	0.0
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REMINDER

Excess ethics can be used towards any general credit deficiency.

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11/12/14

TO: Chris W. Davis [6616]
3933 Lost Miner Court
Las Vegas, NV 89129

FROM: Toni Sarocka, Executive Director
Board of Continuing Legal Education

This notice sets forth the number of credits that you have accumulated toward the requirement of SCR 210 for the 2004 compliance year.

If you have not fulfilled the requirement, the credits you must obtain are shown with a minus sign in the last line of the credit summary section. The minimum requirement of SCR 210 should be met by December 31.

COURSE ATTENDANCE/INSTRUCTION:

Sponsor	Course	Start Date	Location	Credits	
				Ethics	Total
CCBA	EnhanceYourPerform	12/14/04	Las Vegas, NV	0.	8.
ABA	Law of Privilege	07/13/04	alt format,	0.	1.
<hr/>					
ETHICS - 2 Required					
Credits carried forward:				4.0	
Earned: Live 0.0 Alternate 0.0 Total				0.0	
Excess ethics to carry forward, or deficiency				2.0	
<hr/>					
GENERAL CREDITS - 10 Required					
Credits carried forward				1.0	
Earned: Live 8.0 Alternate 1.0 Total				9.0	
Authorship (see attached sheet)					
Total general credits:				10.0	
may include excess ethics not used above					
Excess general credits to carry forward or deficiency				0.0	

REMINDER

Excess ethics can be used towards any general credit deficiency.

Attachment "D"

Statement of Qualifications

Attachment "D"

STATEMENT OF QUALIFICATIONS

I would again like to thank the members of the Committee on Judicial Selection for volunteering their time to review my application for District Court Judge. I am seeking to be appointed to the District Court because my career has been devoted to public service. Eleven of my eighteen years as an attorney have been devoted to public service: six (6) years as a Deputy City Attorney for the City of North Las Vegas, two (2) years as a Senior Attorney Law Clerk working on appeals before the United States Court of Appeals for the Ninth Circuit, and three (3) years working for the United States District Court for the District of Nevada. I also have extensive experience as a litigator in the private sector. My unique experience should prove to be an asset to the District Court.

I am a solo practitioner working on both civil and appellate litigation before Nevada and federal courts. My practice has included client counseling, analyzing trial pleadings, preparing legal strategy, legal research, drafting briefs, supervising others in drafting briefs, analyzing opposing briefs, and appearing at oral arguments. I am currently transitioning my practice, however, to focus solely on mediating or arbitrating disputes.

Even though I am in private practice, I have made time for public service. For eight years, I have served on the Functional Equivalency Committee. As a committee member, I am responsible for reviewing petitions, attending hearings, and drafting reports and recommendations to the Nevada Supreme Court. My public service also includes pro bono work. Recently, I agreed to represent Alabama parents seeking guardianship over their adult son who became incapacitated while visiting Las Vegas. This case has introduced me to many family law issues which are not normally part of my practice.

Previously, I served as the primary litigator and appellate counsel for the City of North Las Vegas (the "City"), as a Deputy City Attorney. I practiced extensively before the Ninth Circuit Court of Appeals, Nevada Supreme Court, United States District Court, Nevada District Court and the Local Government Employee-Management Relations Board. I defended the City and its police department against most of the civil rights actions involving 42 U.S.C. § 1983, Title VII actions, actions under the Americans with Disabilities Acts

("ADA"), and actions under the Age Discrimination in Employment Act ("ADEA"). Many of the civil rights actions that I litigated involved issues that are equally applicable in criminal cases such as probable cause, unreasonable search and seizure, warrant execution, and excessive force. I also defended the City against almost all of the personal injury actions filed against the City.

Before I left the City, I was charged with litigating all employment cases under Nevada's Local Government Employee-Management Relations Act. I also advised the City on many important legal and policy issues which included contract negotiations and issues involving Nevada's Open Meeting Law. I was responsible for reviewing all subpoenas served on the City, both civil and criminal, and successfully quashed many improper subpoenas. I also supervised outside counsel in handling eminent domain cases brought against the City. During my tenure with the City, I served as a mentor. As the litigator with the most experience in the civil division, the other attorneys in the office consistently sought my advice and help in preparing and executing litigation strategy.

Prior to coming to the City of North Las Vegas, I worked for the firm of Morris, Pickering and Peterson. My practice primarily involved complex commercial litigation. I was responsible for multi-million dollar cases for clients that included: Nevada Power Company, MGM Resorts International, Harrah's Entertainment Inc., and Granite Construction Company. While at Morris Pickering, I had the opportunity to work closely with two of the finest attorneys in Southern Nevada, Steve Morris and Kris Pickering, now a justice with the Nevada Supreme Court.

I have also served as an attorney law clerk on the Ninth Circuit Court of Appeals and the United States District Court. I had the pleasure of working with two invaluable mentors, the Honorable Lloyd D. George and the Honorable Johnnie B. Rawlinson. My five years of experience with the courts have provided me with a broad insight to most, if not all, of the civil and criminal issues that will be faced by a District Court Judge. While working for the District Court, one of my primary responsibilities was to review all of the bankruptcy appeals. I reviewed and analyzed the entire record before the bankruptcy court and the parties' appellate briefs.

Under Judge George's and Judge Rawlinson's direction, I then drafted proposed opinions deciding the bankruptcy appeals. I also had the opportunity to review numerous motions to dismiss and for summary judgment on a broad range of issues which included: contracts, employment discrimination, civil rights, takings, intellectual property, personal injury, liens, administrative law, immunities, and unfair trade practices. After my review, I would draft proposed orders deciding those motions. I also drafted numerous proposed orders resolving evidentiary issues in both criminal and civil cases. While working for the district court, I reviewed and finalized proposed jury instructions in both civil and criminal cases. Additionally, I reviewed all sentencing reports for my opinion as to whether the sentences requested met the federal guidelines. Other than participating in oral arguments, my work required that I complete all tasks required of a District Court Judge.

As Judge Rawlinson's first law clerk, I became intimately acquainted with the challenges faced by a newly appointed judge, and I was asked to help develop chamber policies and procedures. During my clerkship on the Ninth Circuit, I was assigned the most difficult cases by Judge Rawlinson. For example, I was responsible for reviewing all death penalty cases and all cases heard en banc. For each case assigned to me, I would review and analyze the record below and the appellate court briefs. I would then prepare a proposed opinion for Judge Rawlinson's review. As Judge Rawlinson's confidence in my abilities grew, I was permitted to have greater input into the ultimate opinion drafted and which opinions would be published. I also served as a mentor to Judge Rawlinson's other law clerks. In many instances, Judge Rawlinson requested that I review proposed opinions drafted by other law clerks before she would provide the final review. While I have not actually performed the duties of a judge, Judge George and Judge Rawlinson, under their kind tutelage, have provided me with first hand experience as to what is required of an outstanding judge.

Throughout my career, I have practiced law with the utmost integrity, which I will bring to the District Court. My experience has provided me with the ability to find creative solutions to complex problems. I have never been satisfied until I have explored all available options. If permitted, I will use all of my talents and preparation on behalf of the District Court and the People of the Great State of Nevada.

Attachment "E"

Writing Sample

Attachment "E"

I. INTRODUCTION

In order to promote substantial justice, this Court should grant rehearing.¹ This Court's Opinion effectively precludes settlement of any unfair labor practice claim. Settlement agreements now serve no useful purpose because such agreements are unenforceable if proceeded by the some employer misconduct which the settlement agreement was designed to insulate. The entire purpose of the Employee-Management Relations Act ("EMRA"), to foster voluntary settlement of employee disputes, becomes a nullity because the Employee-Management Relations Board's ("EMRB") and this Court failed to require proof of the fraudulent inducement necessary to avoid settlement agreements.

The Court should also grant rehearing to promote substantial justice by applying the only legal standard for avoiding resignation, i.e. constructive discharge, which applies even in claims involving unfair labor practices. Because the EMRB did not employ this standard, at a minimum, remand to the EMRB is necessary. Nevertheless, because the record contains no facts showing that Spannbauer was forced to quit due to intolerable working conditions, Spannbauer cannot show the constructive discharge necessary to support his claims of interference with his predisciplinary hearing rights or gender discrimination.

Finally, this Court should granting rehearing to promote substantial justice by recognizing that the EMRB, as an administrative agency, has no equitable powers and therefore lacks the jurisdiction to equitably toll the statute of limitations. Even if tolling were allowed, discovering discriminatory treatment has no bearing on tolling Spannbauer's claim that he was deprived of a pretermination hearing. While this Court acknowledges that the statute of limitation begins to run upon termination, under this Court's holding, the limitation period can be extended indefinitely until the employee learns that he has been treated differently, which could be years, if not decades, past the six-month limitation period. Accordingly, subsequent discovery of a discriminatory motive should not toll the statute of limitations unless the employer did something to actively conceal its discriminatory motive and the employee diligently attempted

¹ Pursuant to Nev. R. App. P. 40(c), this Court may consider rehearing when "the court has overlooked or misapprehended a material fact in the record or a material question of law in the case" or "the court has overlooked, misapplied or failed to consider a statute, procedural rule, regulation or decision directly controlling a dispositive issue in the case." *In Calloway v. City of Reno*, 114 Nev. 1157, 1158, 971 P.2d 1250, 1250 (1998) (citation and internal quotation omitted), this Court held that "[r]ehearing is warranted when it appears that this court has overlooked or misapprehended a material matter in the record or otherwise, or in such other circumstances **as will promote substantial justice.**"

1 to discover the discriminatory treatment prior to the expiration of the statute of limitation. Because
2 Spannbauer failed to show either, the limitation cannot be equitably tolled.

3 Accordingly, this Court should grant rehearing and reverse the district court's order denying the
4 City's Petition for Judicial Review. At a minimum, this matter should be remanded to the EMRB to employ
5 the proper legal standard for rescission of settlement agreements, constructive discharge, and equitable
6 tolling.

7 **II. ARGUMENT**

8 **A This Court's Opinion Has the Unintended Consequence of Precluding Settlement Agreements 9 and Preventing Peaceful Settlement of Labor Disputes.**

10 Rehearing is necessary in order to promote substantial justice to avoid the unintended, but disastrous
11 consequence of precluding settlement agreements and peaceful settlement of labor disputes as a result of this
12 Court's Opinion. This Court acknowledged that "Spannbauer resigned, signing [a] letter agreement, in which
13 he agreed that he would neither sue nor make any other claims against the City or the Department in
14 consideration for the internal affairs investigation being closed." Opinion at 4. This Court, however, gives no
15 justification for refusing to enforce this Settlement Agreement other than the single sentence "that the EMRB
16 appropriately disregarded the resignation agreement, including the covenant not to sue, as there was
17 substantial evidence that the agreement was a culmination of prohibited practices in violation of NRS
18 288.270(1)." Opinion at 17. This single sentence, while providing surface appeal, will have grave
19 consequences, not only for the City of North Las Vegas, but all employers in the state of Nevada.

20 The entire purpose of settlement agreements is to insulate employers and bar supposedly valid claims
21 of misconduct. Because settlement agreements are now unenforceable if preceded by some employer
22 misconduct, they no longer serve any useful purpose. There is no need for a settlement agreement if the
23 employer did nothing wrong prior to entering into the agreement.

24 Courts have repeatedly rejected any per se rule refusing to enforce settlement agreements simply
25 because the agreement was the result of an unfair labor practice, or even more serious misconduct. For
26 example, in *Mahon v. N.L.R.B.*, 808 F.2d 1342, 1345 (9th Cir. 1987), the Ninth Circuit held that employees "are
27 bound by the terms of [a] settlement agreement," even though settlement arose out of the employer's unlawful
28 act of discharging employees for engaging in a protected labor practice. The Court reasoned that the

1 settlement was "agreed to by the local unions, management and the concerned employees" and that the union
2 or employees "may waive a member's statutorily protected rights," including the right to engage in protected
3 activities such as "the right to strike and the right to refuse to cross a picket line." *Id.* at 1344-45.²

4 The United States Supreme Court has even enforced settlement agreements which resulted from
5 threats to deprive a person's liberty. In *Town of Newton v. Rumery*, 480 U.S. 386, 390-93 (1987), a prosecutor
6 refused to dismiss charges of witness tampering unless the criminal defendant agreed to waive his right to sue
7 for civil rights violations. The criminal defendant entered the agreement, but argued that such settlement
8 agreements "are inherently coercive" and that it was "unfair to present a criminal defendant with a choice
9 between facing criminal charges and waiving his right to sue under § 1983." *Id.* The United States Supreme
10 Court held that a voluntary settlement agreement, with no evidence of misconduct other than the "agreement
11 itself," should be enforced. *Id.* at 397-98. The Court found "no reason to believe that release-dismissal
12 agreements pose a more coercive choice than other situations," such as plea bargaining, which "does not
13 violate the Constitution even though a guilty plea waives important constitutional rights." *Id.* at 393. The Court
14 reasoned that in "many cases a defendant's choice to enter into a release-dismissal agreement will reflect a
15 highly rational judgment that the certain benefits of escaping criminal prosecution exceed the speculative
16 benefits of prevailing in a civil action." *Id.* at 394. The court further found that such agreements further the
17 government's interest in "how best to allocate the scarce resources of a criminal justice system that simply
18 cannot accommodate the litigation of every serious criminal charge." *Id.* at 396.

19 The choice faced by Spannbauer is far less coercive than criminal prosecution faced by the criminal
20 defendant in *Rumery*. Spannbauer was not faced with a loss of liberty and the humiliation associated by
21 criminal conviction, but merely the loss of employment, albeit with the potential finding of police misconduct.

22 As a police officer, Spannbauer fully understood the principal of waiver. Spannbauer was given a full
23 opportunity to confer with his Union representatives, including counsel provided by the Union, before signing
24 the release. ROA. 1148 (TS 1484-86). By entering the Settlement Agreement, Spannbauer achieved the
25 desirable result of entirely avoiding a sustained charge of serious police misconduct.

26 ² See also *Titanium Metals Corp. v. N.L.R.B.*, 392 F.3d 439, 447 (D.C. Cir. 2004) (reversing
27 Board's refusal to enforce settlement agreement that "resulted" from an unfair labor practice claim because
28 an unfair labor practice involving employee discipline "falls within the compass of waiveable rights that are
subject to collective bargaining and grievance settlements").

1 By refusing to enforce the Settlement Agreement, this Court precludes any other police officer from
2 obtaining this desirable result. The City is now compelled to process each charge of misconduct to a final
3 result, or else be found to have committed an unfair labor practice, as entering into a settlement agreement
4 now becomes de facto discrimination because the employee is being treated differently than those who are
5 not given the opportunity to resign.

6 Accordingly, this Court's Opinion is in direct contravention of the very purpose of the Employee-
7 Management Relations Act: **to encourage voluntary settlement**. In *Fibreboard Paper Products Corp. v. N.*
8 *L. R. B.*, 379 U.S. 203, 211 (1964), the United Supreme Court held : "One of the primary purposes of the
9 [National Labor Relations] Act is to promote the peaceful settlement of industrial disputes by subjecting
10 labor-management controversies to the mediatory influence of negotiation." NRS 288 evinces this same policy
11 by encouraging employers and employee organizations to agree to mechanisms for resolving disputes.
12 Because settlement agreements are no longer possible, every labor controversy now becomes the subject of
13 lengthy litigation. Both unions and employers alike must pursue each employee claim of an unfair labor
14 practice to its ultimate decision or else face the likely prospect of being found to commit an unfair labor
15 practice. Such a system can hardly be said to foster the industrial peace envisioned by NRS 288.

16 Industrial peace may only be fostered if settlement agreements are enforced by the EMRB, rather than
17 cavalierly set aside without legal justification other than the claim that the agreement was a culmination of a
18 prohibited labor practice. The only legal justification offered by Spannbaauer or the EMRB for avoiding the
19 Settlement Agreement are the catch phrases "misrepresentation" or "false pretenses and misinformation." See
20 Spannbaauer Brief at 22, ll.13-14, EMRB Brief, at p. 14, l. 27 - p. 15, l. 3. To establish such a claim,
21 Spannbaauer must prove and the EMRB must have found by clear and convincing evidence: (1) a false
22 representation by the defendant, (2) the defendant's knowledge or belief that the representation was false (or
23 knowledge that it had an insufficient basis for making the representation), (3) the defendant's intent to induce
24 the plaintiff to consent to an agreement, (4) the plaintiff justifiably relied upon the misrepresentation, and (5)
25 the plaintiff suffered damages as a result of the reliance. *J.A. Jones Const. Co. v. Lehrer McGovern Bovis,*
26 *Inc.*, 120 Nev. 277, 290, 89 P.3d 1009, 1018 (2004). Neither Spannbaauer, nor the EMRB, engaged in such
27 an analysis. At a minimum, this Court should remand the matter to the EMRB in order that the EMRB may
28 determine whether the Settlement Agreement is enforceable under this proper legal standard.

1 Remand however is unnecessary because there is no evidence of fraudulent inducement in the
2 administrative record. As extensively set forth in the City's Reply, Spannbauer cannot meet a single element
3 to establish his claim of fraudulent inducement. Accordingly, this Court should reconsider its decision and
4 enforce the terms of the Settlement Agreement waiving Spannbauer's right to file an unfair labor practice claim.

5 **B. The EMRB and this Court Failed to Employ the Proper Standard for Converting a Resignation**
6 **into a Discharge Amounting to a Prohibited Labor Practice.**

7 The City and the Department do not merely "argue that nothing in the record supports the conclusion
8 that resignation was 'thrust upon' Spannbauer and that the City and the Department interfered with, coerced,
9 or restrained Spannbauer from pursuing a predisciplinary hearing." Opinion at 12. Instead, the City and the
10 Department principally argued that the EMRB failed to employ the proper standard for avoiding resignation.
11 **No one**, including this Court, has cited any authority for the proposition that a resignation can be converted
12 into a discharge when the "resignation was thrust upon" an employee.

13 The only legal standard for avoiding resignation that has ever been employed is **constructive**
14 **discharge**, even in claims involving unfair labor practices. See *Sara Lee Bakery Group, Inc. v. N.L.R.B.*, 296
15 F.3d 292, 300 (4th Cir. 2002) (holding that employee could not establish that resignation was a discharge
16 necessary to prove an unfair labor practice claim when he failed to establish constructive discharge).³

17 As previously set forth, constructive discharge requires proof that a "reasonable person would have
18 felt that he was forced to quit because of intolerable working conditions." *Liston v. Las Vegas Metropolitan*
19 *Police Dept.*, 111 Nev. 1575, 1579-80, 908 P.2d 720, 723-24 (1995). In *Algreco Sportswear*, the NLRB held
20 that the "proper standard of review requires not only that the change in working conditions be "difficult or
21 unpleasant," but that the change be "so intolerable as to force a resignation." The court reasoned that the
22 "mere existence of discrimination is insufficient to warrant consideration of abandonment of employment as
23 a constructive discharge" because "then any discrimination violative of the [National Labor Relations] Act

24 ³ See also *N. L. R. B. v. Brennan's, Inc.*, 366 F.2d 560, 565 (5th Cir. 1966) (holding employee
25 could not establish unfair labor practice claim for discriminatory treatment when "the evidence fails to
26 support the conclusion that [the employee] was constructively discharged by his transfer"); *EDP Med.*
27 *Computer Sys. Inc.*, 284 NLRB 1232, 1234 (1987) (holding "it does not follow that the mere existence of
28 discrimination is sufficient to warrant consideration of abandonment of employment as a constructive
discharge, for if that were the case, then any discrimination violative of the [National Labor Relations] Act
followed by a quit by the discriminatee could be termed a constructive discharge"); *Algreco Sportswear*
Co., 271 NLRB 499, 500 (1984) (holding employee could not establish unfair labor practice claim for
discriminatory termination without establishing constructive discharge).

1 followed by a quit by the discriminatee could be termed a constructive discharge." *Id.* Under this Court's
2 opinion, all resignations after any employer misconduct become constructive discharges, again preventing any
3 employer from settling claims for alleged employer misconduct. Because the EMRB did not employ the
4 standard for constructive discharge, at a minimum, this Court should remand the matter requiring the EMRB
5 to analyze Spannbauer's unfair labor practice claim under this proper legal standard.

6 Nevertheless, remand is unnecessary because there is no evidence in the record that Spannbauer's
7 working conditions had become intolerable so that he was forced to resign. First, "indicating that [Spannbauer]
8 might be treated as a probationary employee " (Opinion at 12), does not establish an intolerable working
9 condition. For example, in *Bauer v. Board of Supervisors*, Case No. 01-15639, 44 Fed. Appx. 194, 200-01,
10 (9th Cir. 2002), the Ninth Circuit held that continuing to treat an employee as probationary, "despite the
11 conclusion of her probationary period," even "[a]ssuming [the employer's continued restriction was unlawfully
12 discriminatory" was "insufficient to support a claim of constructive discharge." The Court reasoned that work
13 place conditions were not so intolerable that the employee was effectively forced to resign, because the
14 employee "had several options besides resignation" including filing "a formal grievance or EEOC charge." *Id.*
15 at 199-201. See also *Swanson v. Northwestern Human Services, Inc.*, Case No. 06-4923276, Fed. Appx. 195,
16 196, (3rd Cir. 2008) (holding "constructive discharge claim lacks merit because the circumstances that
17 purportedly lead to [the employees'] departure-his extension of probation and [the employer's] refusal to
18 remove a disciplinary write-up-simply do not rise to the level of intolerable conditions which would cause a
19 reasonable person in [the employee's] position to resign").

20 Likewise, Spannbauer was not subject to a constructive discharge. Spannbauer was placed on
21 administrative leave with pay pending the outcome of his mitigation hearing. ROA 799-800 (TS 651-52).
22 Even though Chief Paresi may have indicated that Spannbauer could possibly be treated as a probationary
23 employee, there is no evidence in the record that the City had made any final determinations with respect to
24 how it would treat him. Spannbauer cannot claim constructive discharge based on a fear of what might happen
25 in the future, but was required to see the process through until the City made a final determination.

26 For example, in *Fitz v. Pugmire Lincoln-Mercury, Inc.*, 348 F.3d 974, 978 (11th Cir. 2003), the Eleventh
27 Circuit held that even if co-workers' statements were true that the employer planned to fire the employee for
28 his race at some point in the future, such speculation does not create an intolerable employment condition

1 which would support a claim of constructive discharge. The court reasoned that to hold otherwise would
2 "encourage speculative litigation and discourage employees and employers from resolving their differences
3 from within the employment relationship." *Id.* Spannbauer was merely told by his union representatives that
4 there was a possibility that he could be treated as a probationary employee. Speculating as to how he would
5 be treated after the mitigation hearing did not create an intolerable working condition for Spannbauer which
6 would support a constructive discharge claim.

7 This Court also found that Spannbauer "was allowed to resign only after signing a waiver of his rights
8 to pursue claims against the City and Department" (Opinion at 12) as support for converting his resignation
9 into a discharge which supposedly interfered with right to a disciplinary hearing. First, this contention makes
10 no sense. The only force employed was the requirement that Spannbauer actually proceed with the
11 disciplinary hearing if he refused to sign the Settlement Agreement. The only way that the City could cancel
12 the disciplinary hearing without facing an unfair labor practice charge would be to require Spannbauer to waive
13 his rights.

14 More importantly, as already set forth, the mere fact that someone is offered a choice between signing
15 a settlement agreement or proceeding with a grievance or other forms of redress does not create intolerable
16 working conditions necessary to support a claim of constructive discharge. See *Levenstein v. Salafsky*, 414
17 F.3d 767, 775 (7th Cir. 2005) (holding that an employee "who is on leave with pay . . . pending an investigation
18 of serious job misconduct, who resigns rather than waits for the conclusion of reasonable prescribed due
19 process procedures of the institution, has not from an objective standpoint been constructively discharged").⁴

20 Because Spannbauer resigned, rather than face the disciplinary hearing, the City did not interfere with
21 his right to a disciplinary hearing and Spannbauer did not suffer an adverse employment action necessary to
22

23 ⁴ *Roney v. Illinois Dept. of Transp.*, 474 F.3d 455, 462 (7th Cir. 2007) (holding that employee was
24 not constructively discharged because he chose to voluntarily resign instead of going through the available
25 hearing process); *Lawson v. Washington*, 296 F.3d 799, 805 (9th Cir. 2002) (holding that a reasonable
26 person would **not** have felt compelled to resign simply because the employee feared that his violations
27 may result in discipline or termination); *Benningfield v. City of Houston*, 157 F.3d 369, 378 (5th Cir 1998)
28 (holding fear of future retaliation is not sufficient to support a claim of constructive discharge because a
reasonable person would not have felt compelled to resign); *Summit v. S-B Power Tool*, 121 F.3d 416, 421
(8th Cir. 1997) ("To act reasonably, an employee has an obligation not to assume the worst and not to jump
to conclusions too quickly. An employee who quits without giving his employer a reasonable chance to
work out a problem has not been constructively discharged").

1 support a claim of discrimination.⁵ Accordingly, this Court should reconsider its decision and reverse the
2 decision of the EMRB.

3 **C. The EMRB Lacks Jurisdiction to Equitably Toll the Statute of Limitations.**

4 This Court recognized that Spannbauer's unfair labor practice claims were untimely absent equitable
5 tolling. Opinion at 9-11. The EMRB, however, lacks jurisdiction to equitably toll the statute of limitations
6 because it has not been granted any equitable power

7 In *U.S. Fidelity and Guar. Co. v. Lee Investments, LLC*, 641 F.3d 1126, 1135 (9th Cir. 2011), the Ninth
8 Circuit held that "administrative agencies . . . are creatures of statute, bound to the confines of the statute that
9 created them, and lack the inherent equitable powers that courts possess." For that reason, the City expressly
10 argued in its opening brief that in "every Nevada case where an aggrieved party failed to timely file a document
11 necessary to confer jurisdiction on an administrative agency, this Court has held that the administrative agency
12 lacked jurisdiction to adjudicate the claim."⁶

13 In *City of Henderson v. Kilgore*, 122 Nev. 331, 337, 131 P.3d 11, 15, 131 P.3d 11 (2006), this Court
14 concluded that "NRS Chapter 288 does not expressly grant the EMRB power to issue preliminary injunctive
15 relief and that such power cannot be implied." In fact, NRS 288 does not grant the EMRB any equitable
16 powers at all, and therefore the EMRB lacks jurisdiction to equitably toll the statute of limitations. Because
17 Spannbauer's EMRB complaint was untimely, as expressly found by this Court, the EMRB's only option was
18 to dismiss his complaint as untimely. Because the EMRB exceeded its jurisdiction in refusing to enforce the
19 statute of limitations, this Court should reverse the EMRB's decision.

20
21 ⁵ See *Dick v. Phone Directories Co., Inc.*, 397 F.3d 1256, 1268 (10th Cir. 2005) (holding that "an
22 unrealized threat of termination" does not constitute an adverse employment action); *Hottenroth v. Village*
23 *of Slinger*, 388 F.3d 1015, 1030 (7th Cir. 2004) (holding that "it is well established that unfulfilled threats
24 that result in no material harm cannot be considered an adverse employment action"); *Nunez v. City of Los*
Angeles, 147 F.3d 867, 875 (9th Cir. 1998) (holding "[m]ere threats and harsh words are insufficient" to
establish an adverse employment action).

25 ⁶ See Opening Brief at 6 citing *Seino v. Employers Ins. Co.*, 121 Nev. 146, 153, 111 P.3d 1107,
26 1112 (2005) (board regulating industrial insurance); *Rosequist v. Int'l Assoc. of Firefighters Local 1908*,
27 118 Nev. 444, 451, 49 P.3d 651, 655 (2002) (Employee-Management Relations Board); *Reno Sparks*
28 *Visitors Auth. v. Jackson*, 112 Nev. 62, 66-67, 910 P.2d 267, 270 (1996) (Hearing Officer for industrial
insurance); *Southern Nevada Memorial Hospital v. State*, 101 Nev. 387, 394, 705 P.2d 139, 144 (1985)
(board regulating hospitals); and *SIIS v. Partlow-Hursh*, 101 Nev. 122, 124-25, 696 P.2d 462, 463-64
(1985) (Appeals Officer for industrial insurance).

1 **D. Even If the EMRB Had Been Granted Equitable Powers, Substantial Justice does not**
2 **warrant Equitable Tolling.**

3 This Court identified two unfair labor practice claims: (1) interference with Spannbauer's right to a
4 predisciplinary hearing and (2) gender discrimination. Opinion at 11-12. The only basis asserted by the Court
5 for equitable tolling was Spannbauer's testimony that he subsequently discovered that he was treated
6 differently from another female officer. Opinion at 11. Learning that he was treated differently, however, was
7 not necessary to state a claim that he was deprived of his right to a predisciplinary hearing. Upon his
8 resignation, Spannbauer knew he would not be afforded a pretermination hearing and there was nothing left
9 to discover. Accordingly, as a matter of law, tolling does not and cannot apply to his claim that he was deprived
10 a pretermination hearing. Spannbauer's claim of interference is therefore untimely, and the EMRB erred in
11 failing to dismiss that claim.

12 Additionally, tolling does not apply to Spannbauer's claim of gender discrimination. In *Amini v. Oberlin*
13 *College*, 259 F.3d 493, 502 (6th Cir. 2001), the Sixth Circuit held that equitable tolling does not suspend the
14 running of the statute of limitations in a discrimination action "until the plaintiff learns sufficient facts that would
15 lead him to suspect that the defendant acted with discriminatory intent" because "it might be years before a
16 person apprehends that unpleasant events in the past were caused by illegal discrimination." Likewise in
17 *Pacheco v. Rice*, 966 F.2d 904, 905-06 (5th Cir. 1992), the Fifth Circuit refused to equitably toll the statute of
18 limitations when a terminated Hispanic employee argued that the statute of limitations should not begin to run
19 until he discovered that a similarly situated Anglo employee, who had also been accused of sexual
20 harassment, had been investigated under different procedures and ultimately was not discharged. *Id.* at 905-
21 06. Like Spannbauer, the employee reasoned that he "did not perceive that the circumstances surrounding
22 his discharge were discriminatory until he discovered this disparate treatment." *Id.* at 906. The Fifth Circuit
23 rejected the employee's argument, reasoning that equitable tolling "does not permit plaintiffs to suspend the
24 time for filing discrimination complaints indefinitely when they discover instances of disparate treatment of other
25 employees months or years after their discharge." *Id.* at 907. The Court concluded that to "allow plaintiffs to
26 raise employment discrimination claims whenever they begin to suspect that the employers had illicit motives
27 would effectively eviscerate the time limits prescribed for filing such complaints." *Id.*

1 This Court's application of equitable tolling effectively eviscerates the statute of limitations. While this
2 Court held that the statute of limitation begins to run upon termination, under this Court's holding, the limitation
3 period can be extended indefinitely until the employee learns that he has been treated differently, which could
4 be years, if not decades, past the six-month limitation period. Accordingly, courts have not permitted
5 subsequent discovery of a discriminatory motive to toll the statute of limitations unless the employer did
6 something to actively conceal its discriminatory motive. See *Gomes v. Avco Corp.*, 964 F.2d 1330, 1333, 964
7 F.2d 1330 (2nd Cir. 1990) (holding employee was not entitled to equitable tolling based on belated discovery
8 of discrimination treatment when the employee "failed to present any evidence that either defendant actively
9 prevented [the employee] from discovering that a non-Portuguese person had received the promotion that [the
10 employee] had sought").⁷ This Court, however, has not pointed to any facts showing misrepresentation or
11 active concealment.

12 Even if discovery of a discriminatory motive alone were sufficient to toll the six-month limitation period,
13 this Court recognized the employee's lack of diligence would bar any resort to equitable tolling. Opinion at 10-
14 11. Diligence does not merely apply after the discovery of a discriminatory motive, but requires an employee
15 to diligently attempt to discover disparate treatment during the six-month limitation period. In *Cada v. Baxter*
16 *Healthcare Corp.*, 920 F.2d 446, 451 (7th Cir. 1990), the Seventh Circuit explained that equitable tolling
17 "permits a plaintiff to avoid the bar of the statute of limitations if despite all due diligence he is unable to obtain
18 vital information bearing on the existence of his claim." The court reasoned that "[i]f a plaintiff were entitled
19 to have all the time he needed to be certain his rights had been violated, the statute of limitations would never
20 run-for even after judgment, there is no certainty." *Id.*

21 Spannbauer did nothing to discover such disparate treatment during the six-month limitation period.
22 If this Court permits mere happenstance to toll the limitation period, the limitation period will be extended
23 indefinitely, effectively turning this short six-month limitation into one of unlimited duration. Accordingly, the
24 facts do not warrant equitable tolling, and this Court should reverse the EMRB's decision to do so.

25 ⁷*English v. Pabst Brewing Co.*, 828 F.2d 1047, 1050 -1051, 828 F.2d 1047 (4th Cir. 1987) (holding
26 employee claim of age discrimination was not equitably tolled by the employee discovering after the statute
27 of limitation had run that he was replaced by a younger man when "there has been no showing that [the
28 employer] concealed or misrepresented anything about its own reorganization" because "equitable tolling
rests upon the proposition that the defendant's actions require relieving the plaintiff from the burden of a
statutory limitations period").